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dangerous undertaking for persons trained only in the law to constitute themselves final judges of the worth of pictorial illustrations, outside of the narrowest and most obvious limits. At the one extreme some works of genius would be sure to miss appreciation. Their very novelty would make them repulsive until the public had learned the new language in which their author spoke. * * * At the other end, copyright would be denied to pictures which appealed to a public less educated than the judge. Yet if they command the interest of any public, they have a commercial value,—it would be bold to say that they have not an æsthetic and educational value,—and the taste of any public is not to be treated with contempt.”

From this view, the effect of which, it would seem, will be to greatly increase the number of copyrights and proportionately stimulate the activity of the office of the Librarian of Congress, Justices Harlan and McKenna emphatically dissented, concurring with the Circuit Court of Appeals in the following language: “If a chromo, lithograph or other print, engraving or picture has no other use than that of a mere advertisement * * * it would not be promotive of the useful arts * * * and the copyright statute should not be construed to include such publication.”

Should the theory of this decision be followed out to reasonable lengths it is easily seen how it might impinge upon the territory of trade-marks. On general view, it may well be questioned whether the constitutional provision “granting for limited times to authors the exclusive rights to their writings” has not been stretched in several directions to points from which the courts will ultimately withdraw.

JURISDICTION IN DIVORCE PROCEEDINGS.

Owing to the fact that the States have the sole power to regulate the domestic relations of its citizens, the subject of divorce has reached the United States Supreme Court only when there has been involved some constitutional question. This question has generally been the meaning and application of the “full faith and credit” clause, and it is held that that clause does not apply to the matter of jurisdiction. The jurisdiction of a court in one State may be inquired into in a collateral proceeding in another State. *Thompson v. Whitman*, 18 Wall. 457; *Wisconsin v. Pelican Ins. Co.*, 127 U. S. 265.

In this country it has been held universally that the true test of jurisdiction in divorce proceedings is domicil. *Smith v. Smith*, 13 Gray 209; *People v. Dowell*, 25 Mich. 247; *Hoffman v. Hoffman*, 40 N. Y. 30. It follows, then, that where neither party has a bona fide domicil within the State where the decree of divorce is granted, and where service is made by publication only, upon the defendant in another State, such decree is entitled to no faith and credit in that other State. *Sewall v. Sewall*, 122 Mass. 156; *Litowitch v.*

Litowitch, 19 Kan. 451; *Van Fossen v. State*, 37 Ohio St. 317; *Thelen v. Thelen*, 75 Minn. 433; and two cases recently decided in the Supreme Court have approved and adopted this view. *Bell v. Bell*, 181 U. S. 175; *Streitwolf v. Streitwolf*, 181 U. S. 179.

The serious disagreement arises over the question whether a bona fide domicile by the plaintiff only, together with mere constructive service upon the defendant, is sufficient to give a State such jurisdiction in divorce proceedings as to require the recognition of the decree granted by other States. Most of the State courts have answered this question in the affirmative as regards the status of both parties. *Harding v. Alden*, 9 Me. 140; *Hood v. Hood*, 11 Allen 196; *Ditson v. Ditson*, 4 R. I. 87; *Felt v. Felt*, 59 N. J. Eq. 606. A contrary view is taken by the courts of New York and one or two other States. They refuse to recognize that the matrimonial relation of a party domiciled within its territory may be changed by an adjudication in another State, unless there has been actual notice to, or personal appearance entered by such party; but they admit that the status of a party domiciled in another State may be altered in accordance with the law of that other State. *People v. Baker*, 76 N. Y. 78; *In re Kimball*, 155 N. Y. 162; *McCreery v. Davis*, 44 So. Car. 195. Most courts recognize the distinction between the proceeding *in rem* which determines the status and that *in personam* which settles the personal rights of the parties in such matters as relate to alimony, the custody of children located in another State, and prohibitions against marriage. *Turner v. Turner*, 44 Ala. 450; *Kline v. Kline*, 57 Ia. 386; *Garner v. Garner*, 56 Md. 128. This much mooted question the Supreme Court has not as yet directly passed upon, but it has drawn a distinction, not made in the decisions of the State courts. Thus, it was held in *Atherton v. Atherton*, 181 U. S. 155, that where the plaintiff has a bona fide domicile in the State of the matrimonial domicile, that State has such jurisdiction of the subject matter,—though the defendant is served with constructive notice only,—as to require other States to recognize the divorce granted, as valid and binding on both parties. Whether the bona fide domicile of the plaintiff in a State other than that of the matrimonial domicile would alone be sufficient to give jurisdiction, was left an open question.

A phase of this subject, not before passed upon by the Supreme Court, was presented to that tribunal in the recent case of *Andrews v. Andrews*, 23 Sup. Ct. 237, in which it was held that the appearance of the non-resident defendant could not invest a court with jurisdiction of a suit for divorce, instituted by a person who had no bona fide domicile within the State. This question has arisen a few times in the State courts, and has been decided in each case in accord with the present decision. *People v. Dawell*, 25 Mich. 247; *Maguire v. Maguire*, 7 Dana (Ky.) 183; *Harrison v. Harrison*, 20 Ala. 629; *dictum* in *Chase v. Chase*, 6 Gray 161. The question, which was above mentioned as being left undecided in *Atherton v. Atherton*, was also left open in this case. The discussion has now narrowed down to that one point, and the decision of the Supreme Court as

to that is awaited with interest. If anything can be inferred from the court's reasoning in *Atherton v. Atherton* and in the present case, it would seem that a bona fide domicil by a party plaintiff in any State would of itself confer jurisdiction. Public policy would seem to require that it should not be necessary for a plaintiff to continue or acquire a domicil in the State of the matrimonial domicil, in order to obtain a divorce that would be recognized in other States.

The present case is important in that it so clearly brings out the fact that in divorce proceedings domicil is the inherent element upon which jurisdiction must rest, whether the action is *ex parte* or *inter partes*. The authority of a court does not in such case depend on its jurisdiction over the parties, but on its jurisdiction over the subject matter, viz.: bona fide domicil. Domicil is the primary consideration; jurisdiction of the parties is only secondary. In matters of private concern, if both parties are willing to submit to a State's jurisdiction, its decree or judgment is binding and must be recognized as valid in all the States. But in divorce the State is an interested third party, being bound to guard the morals of its citizens. Consequently a State must waive its rights by some legislative enactment, in order to be concluded by the judgment of another State, which had no jurisdiction of the subject matter—domicil.

The English decisions, though in themselves they are not entirely harmonious, seem to be in conflict with the principal case. *Calwell v. Calwell*, 3 Swab. & T. 259-61; *Niboyet v. Niboyet*, 3 P. D. 52.

VESTED RIGHTS AS CONFERRED BY A FINAL DECREE FOR ALIMONY.

The nature of a decree for divorce and a permanent allowance of alimony is presented and conflicting opinions put forth in the case of *Livingston v. Livingston*, 66 N. E. 123, recently decided by the New York Court of Appeals. The case arose upon the following facts. In 1892 the wife obtained judgment of absolute divorce, including a permanent allowance of money to be paid in installments. No appeal was taken by the defendant from the decree; it reserved no power in the court to alter it; and no such power was conferred by the statute then in force. In 1901 the husband obtained from the same court an order reducing the alimony, on proof of a substantial change of circumstances. The order was granted under the supposed authority of c. 742, N. Y. Laws of 1900, amending Code Civ. Proc., sec. 1759, by allowing the court "at any time after final judgment, *whether heretofore or hereafter rendered*, to annul, vary or modify" the order of alimony. This statute, in so far as it applies to judgments entered before its enactment, the Appellate Division held to be unconstitutional, and reversed the order of reduction. By a majority of one, the Court of Appeals has sustained the ruling of the Appellate Division.

The constitutional provision said to be violated is that no person shall be deprived of property without due process of law. (N. Y. Const., art. I, sec. 6.) The decision therefore involves the proposi-